

# **Exhibit 54**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION

4 ACQIS LLC \* September 1, 2022  
5 VS. \* CIVIL ACTION NOS.  
6 ASUSTEK COMPUTER, INC. \* W-20-CV-966  
LENOVO GROUP LTD., ET AL\* W-20-CV-967  
WIWYNN CORPORATION \* W-20-CV-968

7  
8 BEFORE THE HONORABLE ALAN D ALBRIGHT  
SUPPLEMENTAL CLAIM CONSTRUCTION HEARING

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09:05 1 (Hearing begins.)

09:05 2 THE CLERK: A civil action in Cases

09:05 3 6:20-CV-966, 967 and 968, ACQIS LLC versus ASUSTeK

09:05 4 Computer Incorporated, et al. Cases called for a

09:05 5 supplemental claim construction hearing.

09:05 6 THE COURT: If I could have announcements

09:05 7 from counsel, please.

09:05 8 MS. AMSTUTZ: Good morning, Judge

09:05 9 Albright. May it please the Court. Paige Amstutz with

09:05 10 Scott, Douglas & McConnico on behalf of plaintiff ACQIS

09:06 11 LLC.

09:06 12 I'm joined by my co-counsel from the

09:06 13 Dorsey firm, Mr. Case Collard, Mr. Mark Miller and

09:06 14 Mr. Elliot Hales. And depending on the issue, you will

09:06 15 hear from one of those three gentlemen this morning.

09:06 16 THE COURT: Welcome back. It's been too

09:06 17 long since I've seen you in court.

09:06 18 MS. AMSTUTZ: Nice to hear you and see

09:06 19 you, Judge.

09:06 20 THE COURT: Now for someone that's not

09:06 21 been too long since I've seen in court, Mr. Ravel?

09:06 22 MR. RAVEL: Thank you, Judge.

09:06 23 THE COURT: It's nice to see you anyway.

09:06 24 MR. RAVEL: I know it's a common

09:06 25 occurrence. Thanks for noticing.

09:06 1 Judge, Steve Ravel for the Lenovo  
09:06 2 defendants. With me today from the Desmarais firm are  
09:06 3 Jeff Seddon and Michael Wueste. And Mr. Seddon will be  
09:06 4 our primary speaker today.

09:06 5 THE COURT: Give me just one second to  
09:06 6 get organized, I'll be right with you.

09:06 7 MR. SIEGMUND: And, Judge, just for the  
09:06 8 record, this is Mark Siegmund on behalf of defendant  
09:06 9 Wiwynn. Also with me this morning is Hal Davis from  
09:07 10 Greenberg Traurig.

09:07 11 I believe that Lenovo will be handling  
09:07 12 the majority of the argument, but in case they need  
09:07 13 some backup, we're here as well.

09:07 14 THE COURT: I think your sitting would be  
09:07 15 better if you were a little over this way and you  
09:07 16 couldn't see that A&M diploma. I'm not sure what the  
09:07 17 other one is. But, you know, if you were going to  
09:07 18 block one, I would -- at any rate.

09:07 19 MR. SIEGMUND: That's there for you,  
09:07 20 Judge.

09:07 21 THE COURT: I have -- and you're not the  
09:07 22 only A&M graduate on this call, I know for a fact.

09:07 23 So give me one second.

09:07 24 (Pause in proceedings.)

09:07 25 MS. MARRIOTT: Your Honor, this is also

09:07 1 Michelle Marriott and Chris Schmidt from Erise IP for  
09:07 2 defendant ASUSTeK. And I believe Melissa Smith is also  
09:07 3 on the call with us.

09:07 4 THE COURT: Welcome to all of you.

09:07 5 Welcome, Ms. Smith.

09:07 6 MS. SMITH: Good morning, Your Honor.

09:07 7 THE COURT: Anyone else? Okay.

09:07 8 Okay. Josh suggests we have plaintiff  
09:08 9 start first, so that's what we'll do.

09:08 10 MR. COLLARD: Thank you, Your Honor.

09:08 11 This is Case Collard for ACQIS from Dorsey & Whitney.

09:08 12 And may it please the Court.

09:08 13 I think I'd like to just make sure and  
09:08 14 set the stage and let you know who will be talking  
09:08 15 about which item and which item I'll be talking about  
09:08 16 and where we'll start.

09:08 17 So from ACQIS' perspective, we have three  
09:08 18 items to discuss. One is the backwards compatibility  
09:08 19 issue that you requested and received supplemental  
09:08 20 briefing on. I'll be addressing that.

09:08 21 The next is a dispute regarding the scope  
09:08 22 of application of the other two EMC claim  
09:08 23 constructions. Mr. Miller will be handling that issue.

09:08 24 And then the final issue is if we get  
09:08 25 into scheduling, there is one issue that we feel

09:09 1 relates to the schedule that is a discovery dispute  
09:09 2 that we submitted via the 500-word chart process.

09:09 3 If we get to that, if you'd like to  
09:09 4 discuss that today, that would be something that  
09:09 5 Mr. Hales would handle.

09:09 6 So if that is all sort of understood,  
09:09 7 then I'm happy to jump into the issues on backwards  
09:09 8 compatible.

09:09 9 I will share my screen for some slides.

09:09 10 Look at the slide -- can you see the  
09:09 11 slides, Your Honor?

09:09 12 Okay. Great.

09:09 13 So you made a comment at the last hearing  
09:09 14 that, you know, you would think of nothing else during  
09:10 15 the interim while we were worked on this. Nonetheless,  
09:10 16 I'm going to reset the stage a little bit.

09:10 17 So that -- I'm going to do three things.

09:10 18 I'm going to reset the stage, sort of how we got here.

09:10 19 I'm going to try to frame the issue or actually reframe  
09:10 20 the issue in a way that I think provides some clarity.  
09:10 21 And then I'm going to offer what I think is a simple  
09:10 22 and elegant solution to this issue.

09:10 23 So as we reframe, you may recall in the  
09:10 24 hearing in your courtroom which was in July I pointed  
09:10 25 to two things that I thought really exhibited this idea

09:10 1 of backwards compatibility was acknowledged all  
09:10 2 throughout the history of the litigation of the ACQIS  
09:10 3 patents, going back to this 2011 claim construction  
09:10 4 from Judge Davis.

09:10 5 And here I have a slide of a slide. It's  
09:10 6 kind of meta, but this is our claim construction slide.  
09:10 7 We have been very consistent in how we have articulated  
09:10 8 these issues. So this is our claim construction slide  
09:11 9 from November 2021 that I pointed to that has our  
09:11 10 highlighting of what Judge Davis said.

09:11 11 This has been explored at the hearing, in  
09:11 12 our papers. I don't want to spend a lot of time on it,  
09:11 13 but I just wanted to reframe that issue.

09:11 14 And then the other piece of that puzzle  
09:11 15 the EMC statements at the appellate argument in, you  
09:11 16 know, earlier in 2022. And so that spans over a decade  
09:11 17 of time where this idea of backwards compatibility has  
09:11 18 been acknowledged by the Court, by EMC, acknowledging  
09:11 19 that this idea of backwards compatibility was a part of  
09:11 20 the claim constructions in their case and a part of how  
09:11 21 the patents worked.

09:11 22 We were criticized in one of the briefs  
09:11 23 by defendants of saying, well, you're pointing to  
09:11 24 litigation commentary. You're not pointing to the  
09:11 25 intrinsic record.

09:11 1                   Well, we pointed to the intrinsic  
09:11 2 evidence that supports the idea of having backwards  
09:12 3 compatibility as a part of these patents and as a part  
09:12 4 of the construction of PCI bus transaction. And that's  
09:12 5 covered pretty extensively in our responsive brief on  
09:12 6 this issue.

09:12 7                   So that's for the Lenovo docket, that's  
09:12 8 Docket 202, Pages 1 and 2 of the response brief and  
09:12 9 that's where it discusses the how, how this invention  
09:12 10 of Dr. Chu and of ACQIS remains backwards compatible by  
09:12 11 using PCI-like buses with a non-PCI or non-PCI-like  
09:12 12 channel.

09:12 13                  And there was a lot of argument, both in  
09:12 14 the last hearing and in the papers about a time frame,  
09:12 15 saying that ACQIS is looking at the wrong time frame.  
09:12 16 There was this established set of peripherals and  
09:12 17 you're looking back from the time of the invention.  
09:12 18 And that's your time frame. You can't look forward.

09:13 19                  I have to tell you, Your Honor, I think  
09:13 20 these time frame arguments are misguided. The process  
09:13 21 is the patent infringement process that we have to  
09:13 22 follow. We can't skip steps and say, well, because  
09:13 23 there was a future standard that had a different name,  
09:13 24 there cannot be infringement and you cannot look at  
09:13 25 that future standard for infringement.

09:13 1 You can't skip steps based on the name of  
09:13 2 a standard. You have to construe the claims and then  
09:13 3 you have to apply those claims to the accused products  
09:13 4 to determine -- to determine infringement. And so  
09:13 5 don't get hung up on the names of the standards or even  
09:13 6 the time frames. It's the functionality and the scope  
09:13 7 of the claims as properly construed that we are  
09:13 8 focusing on today.

09:13 9 So that's a little bit of the background.  
09:13 10 Now it's time for my reframing of the issue. And I  
09:13 11 think I'm trying to articulate what the core of the  
09:14 12 dispute is between the parties today. And that is, is  
09:14 13 backwards compatibility one way for a transaction to be  
09:14 14 in accordance with the PCI transaction?

09:14 15 And I would suggest that defendants'  
09:14 16 approach creates a kind of bizarre potential situation.

09:14 17 So if you were to go with defendants'  
09:14 18 approach and say that a transaction that is compatible  
09:14 19 with the PCI local bus specification but is not in  
09:14 20 accordance with the PCI local bus specification, I  
09:14 21 think that that is a nonsensical result.

09:14 22 I think if something's "in accordance  
09:14 23 with," then that -- if something is compatible with the  
09:14 24 specification because -- due to backwards  
09:14 25 compatibility, then it's in accordance with the

09:14 1 specification.

09:14 2 And we asked that question in our briefs,  
09:14 3 and I have not heard a good answer for why "in  
09:15 4 accordance with" would exclude backwards compatibility.

09:15 5 And there's sort of one issue that we  
09:15 6 just barely touched on in our briefs, but I wanted to  
09:15 7 highlight based upon my prep today.

09:15 8 And as we were looking at the exhibits --  
09:15 9 this is in Judge Burroughs' claim construction order --  
09:15 10 she has a chart saying "ACQIS' construction," "EMC's  
09:15 11 construction," as she -- in her claim construction  
09:15 12 order.

09:15 13 And it's telling because EMC actually  
09:15 14 didn't seek the terms in that chart "in accordance with  
09:15 15 the PCI local bus specification." They said they  
09:15 16 wanted "as defined by the PCI local bus specification."

09:15 17 And I think that that's -- there's a real  
09:15 18 difference to those terms. I think "as defined by" is  
09:15 19 much more rigorous than "in accordance with." And "in  
09:15 20 accordance with," I think, matches that the idea of  
09:15 21 compatibility is key.

09:15 22 And one of the things I would say is that  
09:16 23 defendants have been very keen to say, we are bound by  
09:16 24 what the Federal Circuit has done in EMC. Well, that  
09:16 25 means that we are bound by "in accordance with."

09:16 1                   We can't just simply say, well, it says  
09:16 2 "in accordance with," but we want to treat this as a  
09:16 3 very high standard. We want to treat this as "as  
09:16 4 defined by the PCI local bus specification."

09:16 5                   So I think that that also ties into the  
09:16 6 fact that there is a recognition, going back to Judge  
09:16 7 Davis, that maintaining software compatibility when you  
09:16 8 have a different physical bus design is really what  
09:16 9 this invention is about.

09:16 10                  And so now I want to get to what I would  
09:16 11 call my proposed solution here.

09:16 12                  Throughout the defendants' papers, they  
09:16 13 say that you can't adopt or backwards compatible  
09:16 14 because it is inconsistent -- these are -- this is just  
09:16 15 a sampling of words I pulled out -- inconsistent, it's  
09:17 16 an alternative concept, it changes the scope, it  
09:17 17 improperly expands the definition. And I've chosen a  
09:17 18 really, you know, an example that pulls a few of those  
09:17 19 together.

09:17 20                  This is from defendants' response where  
09:17 21 they state the proposed construction, but what they do  
09:17 22 here is the emphasis they add -- they don't just add  
09:17 23 emphasis. They add the Bracketed 1 and the Bracketed 2  
09:17 24 to try to make these, and then they say: As the  
09:17 25 emphasized language shows, because backwards compatible

09:17 1 is an alternative to transactions in accordance with,  
09:17 2 then it would include other transactions not in  
09:17 3 accordance with.

09:17 4 They're treating it as an expansion of  
09:17 5 scope, but that's never been our position. And if  
09:17 6 you'll allow me, I don't think that that's the Court's  
09:17 7 intention here with the use of "or backwards  
09:18 8 compatible."

09:18 9 And I think we have a very grammatical  
09:18 10 solution which is how "or" is being used here is not as  
09:18 11 disjunctive. This "or" in the alternative this. But  
09:18 12 it is to connect alternatives for the same thing which  
09:18 13 is a common use of "or."

09:18 14 We have some dictionary definitions here  
09:18 15 on the slide. But you know, one example in a sentence  
09:18 16 is photons or individual particles of light travel huge  
09:18 17 distances in space. Those things are equivalents.  
09:18 18 They are not alternatives.

09:18 19 And so if you treat these as equivalents  
09:18 20 or if you treat backwards compatibility of -- as an  
09:18 21 example of how to be in accordance with something, then  
09:18 22 I think essentially all defendants' arguments go away.  
09:18 23 Because every objection they have is based on an  
09:18 24 expansion of scope.

09:19 25 There's actually case law, pretty recent

09:19 1 case law that supports this interpretation in the claim  
09:19 2 construction world. This is a Federal Circuit case  
09:19 3 from August 2021, Amazon Web Services v. PersonalWeb  
09:19 4 Techs.

09:19 5 And this, you know, I was sort of  
09:19 6 surprised to find, is on point about the idea of using  
09:19 7 this type of "or." Not disjunctive but an "or" to  
09:19 8 connect equivalents in a patent.

09:19 9 And the Federal Circuit says that it is  
09:19 10 being used to connect two words that are synonyms or  
09:19 11 equivalents of each other in the patent. And they said  
09:19 12 neither party cites a case which held that the word  
09:19 13 "or" in a patent claim can be used as a connector for  
09:19 14 synonyms.

09:19 15 But the Supreme Court has held that in a  
09:19 16 statutory context. And then they point out that  
09:20 17 statutory interpretation canons can be used for  
09:20 18 interpreting patent claims.

09:20 19 I think we actually have even a much  
09:20 20 easier issue here, because this is not something that  
09:20 21 is language out of the patent claim. The Court can  
09:20 22 just say this is how we are using "or" in this  
09:20 23 instance. It is to connect equivalents or to show an  
09:20 24 example of something that's in accordance with. The  
09:20 25 Court can just clarify its meaning.

09:20 1 I think it's important the Court do that.  
09:20 2 I don't know if the Court is aware, but the other  
09:20 3 pending case in ACQIS that was set for trial in October  
09:20 4 in the Eastern District of Texas has been settled. So  
09:20 5 now our cases would be the first, the cases that are  
09:20 6 furthest along.

09:20 7 So I think it is important to get this  
09:20 8 settled. Because although Judge Payne and Judge  
09:20 9 Gilstrap had been looking at this issue, they now will  
09:20 10 not have a reason to further look at this issue.

09:20 11 And so the easiest solution for the  
09:21 12 backwards compatibility issue is to confirm that the  
09:21 13 "or" in your construction means that or backwards  
09:21 14 compatible is just an example of how to be in  
09:21 15 accordance with the specification. And we would even  
09:21 16 suggest that if it provides extra clarity, you could  
09:21 17 use "e.g." or "for example, backwards compatible"  
09:21 18 instead of "or backwards compatible" to reach the  
09:21 19 same -- to have the same effect.

09:21 20 And so that's all I have on backwards  
09:21 21 compatible, Your Honor.

09:21 22 And I would assume or suggest that we'll  
09:21 23 take these sort of one issue at a time rather than  
09:21 24 turning it to Mr. Miller to start talking about the  
09:21 25 other claim construction.

09:21 1 THE COURT: Yeah. That makes sense to  
09:21 2 me.

09:21 3 A response?

09:21 4 MR. SEDDON: Jeff Seddon for the Lenovo  
09:21 5 defendants, Your Honor. And I think I'm also speaking  
09:21 6 for the remaining defendants on this. And I have some  
09:21 7 slides as well, if you don't mind me putting them up.

09:21 8 Is Your Honor able to see that?

09:22 9 Fantastic.

09:22 10 So, Your Honor, I think the first point I  
09:22 11 want to start with is really right where Mr. Collard  
09:22 12 started and, frankly, I think where Mr. Collard ended,  
09:22 13 which is the notion that adding "or backwards  
09:22 14 compatible" would not modify the claim scope.

09:22 15 In fact -- and this is I think the  
09:22 16 primary point, this is the point that Your Honor asked  
09:22 17 for argument on -- adding "or backwards compatible" to  
09:22 18 this claim construction would and it is ACQIS' intent  
09:22 19 that it would modify the claim scope.

09:22 20 I hear what ACQIS is saying with regard  
09:23 21 to this notion that "or" can be a disjunctive. It  
09:23 22 doesn't have to be a disjunctive. It could just be a  
09:23 23 definition.

09:23 24 But, in fact, what is happening here is  
09:23 25 ACQIS is suggesting that Your Honor add additional

09:23 1 language to the claim construction that adds this "or  
09:23 2 backwards compatible" possibility.

09:23 3 And while ACQIS is saying you can treat  
09:23 4 this as just an example, you can treat this as just a  
09:23 5 definition, this is going to go in front of a jury and  
09:23 6 the ordinary language -- an ordinary person who looks  
09:23 7 at this and reads it is going to see "or."

09:23 8 And when I say, I want to have cereal or  
09:23 9 toast for breakfast, that doesn't mean that cereal  
09:23 10 means toast. We're not defining that. It means I'm  
09:23 11 going to have one or the other. Maybe both, but  
09:23 12 certainly one or the other.

09:23 13 And so when you add this "or backwards  
09:24 14 compatible," it is going to be effectively adding a  
09:24 15 second alternative category.

09:24 16 Now, ACQIS provides no legal basis nor  
09:24 17 any basis -- and I will say this -- nor any basis in  
09:24 18 the intrinsic evidence for the Court to modify a  
09:24 19 binding construction from the Federal Circuit. There  
09:24 20 is none.

09:24 21 Now, the Federal Circuit's construction  
09:24 22 applies as a matter of law. Its holding is binding.  
09:24 23 Your Honor recognized that and Your Honor said that you  
09:24 24 would adopt the Federal Circuit's claim constructions  
09:24 25 with regard to the other constructions. The only

09:24 1 question here is whether or not it excludes the issue  
09:24 2 of backwards compatibility.

09:24 3 There is no case that ACQIS cites where a  
09:24 4 district court modified the Federal Circuit claim  
09:24 5 construction. So there's no legal basis for that.

09:24 6 And as ACQIS points out, the vast  
09:24 7 majority of their argument here comes from the notion  
09:25 8 that backwards compatibility has been recognized by  
09:25 9 other courts as something that is generally significant  
09:25 10 to the litigation. And it points to a number of other  
09:25 11 courts.

09:25 12 But the thing is, Your Honor, every  
09:25 13 single one of those other courts looked at this and  
09:25 14 recognized that regardless of the issue of backwards  
09:25 15 compatibility, despite considering the issue of  
09:25 16 backwards compatibility, PCI bus transactions still had  
09:25 17 to be in accordance with the PCI standard.

09:25 18 So it's not in accordance with or  
09:25 19 backwards compatible. It's in accordance with the  
09:25 20 industry standard.

09:25 21 ACQIS suggests that in accordance with is  
09:25 22 just another way of saying backwards compatible. Or  
09:25 23 backwards compatible is just another way of saying in  
09:25 24 accordance with.

09:25 25 But, Your Honor, use your common sense.

09:25 1 That doesn't make sense. If it was just the same  
09:25 2 thing, if it was that clear that something was --  
09:26 3 compatible with was in accordance with the standard,  
09:26 4 then why would they be trying to write that into the  
09:26 5 construction? They wouldn't.

09:26 6 And frankly, Your Honor, that's my point  
09:26 7 number two. That's my second major point here. We  
09:26 8 don't need to close our eyes to the real world  
09:26 9 consequences of this just because we're dealing with  
09:26 10 the claim construction.

09:26 11 The reality is we know why ACQIS wants to  
09:26 12 modify the Federal Circuit's claim construction. It's  
09:26 13 because they fought this issue and they lost at the  
09:26 14 Federal Circuit.

09:26 15 They went up on summary judgment. They  
09:26 16 appealed summary judgment in the EMC case where the EMC  
09:26 17 court found under the Federal Circuit's construction,  
09:26 18 the construction the Federal Circuit adopted, that  
09:26 19 ACQIS' patents did not cover products using PCI  
09:26 20 Express.

09:26 21 The Federal Circuit looked at it. They  
09:27 22 looked at the claim construction. They adopted the  
09:27 23 claim construction. And they affirmed the EMC case's  
09:27 24 noninfringement determination.

09:27 25 And so now what ACQIS is trying to do is

09:27 1 ACQIS is trying to get around that noninfringement  
09:27 2 determination and get around the Federal Circuit's  
09:27 3 claim construction by asking Your Honor to modify the  
09:27 4 claim construction.

09:27 5 This isn't an issue where we need to skip  
09:27 6 ahead and look at the issue of what it covers or what  
09:27 7 it doesn't cover. We don't even need to look at the  
09:27 8 accused products to make this determination. We just  
09:27 9 need to look at the situation and think about why ACQIS  
09:27 10 is asking Your Honor to address this, to address an  
09:27 11 issue that they already raised in the Federal Circuit.

09:27 12 They argued the issue of backwards  
09:27 13 compatibility with the Federal Circuit and they still  
09:27 14 lost. And the Federal Circuit adopted this  
09:27 15 construction. And now they're trying to add it back  
09:27 16 into the construction. And they're trying to do it in  
09:27 17 order to save their case. Because they know that under  
09:27 18 the Federal Circuit's construction, they lose.

09:28 19 The Federal Circuit said, unambiguously,  
09:28 20 the determination of noninfringement flows directly  
09:28 21 from the claim constructions. And so they know that if  
09:28 22 you move forward with the Federal Circuit's  
09:28 23 constructions, unambiguously, they lose.

09:28 24 Now, ACQIS says, okay. We can add this  
09:28 25 in as a clarification. It means the same thing. Well,

09:28 1 frankly, Your Honor, if that were true, then they would  
09:28 2 lose in any case. Because if the claim construction's  
09:28 3 the same scope, then the noninfringement determination  
09:28 4 still flows directly from the claim construction.

09:28 5                   The EMC case found as a matter of law,  
09:28 6 and we argued this in our motion for judgment, that  
09:28 7 they -- there was no infringement of PCI Express  
09:28 8 devices of ACQIS' PCI claims as a matter of law, and  
09:28 9 the Federal Circuit affirmed. And they're collaterally  
09:29 10 estopped from raising that same issue here.

09:29 11                   And when we argued that back in July,  
09:29 12 they -- ACQIS fought a lot and they raised a lot of  
09:29 13 distinctions with regard to the claim constructions,  
09:29 14 but they didn't really contest that on the issue of  
09:29 15 infringement, they were collaterally estopped.

09:29 16                   So this is all something where it only  
09:29 17 makes sense that they're doing this, that they're  
09:29 18 trying to rewrite this in here because they're trying  
09:29 19 to expand the scope and they're trying to do an end  
09:29 20 runaround the claim construction that the Federal  
09:29 21 Circuit issued and the Federal Circuit found resulted  
09:29 22 in noninfringement.

09:29 23                   Your Honor should reject that. Your  
09:29 24 Honor should not open the door to ACQIS attempting to  
09:29 25 do an end runaround the Federal Circuit's decision.

09:29 1                   There's no legal basis for it. There's,  
09:29 2                   frankly, no intrinsic evidence that suggests that you  
09:29 3                   can treat PCI bus transactions as being somehow open to  
09:29 4                   backwards compatibility. They don't cite anything that  
09:30 5                   talks about the PCI bus transactions in particular  
09:30 6                   being backwards compatible.

09:30 7                   Instead, what we should be doing here is  
09:30 8                   we should be focusing on the claims that are  
09:30 9                   legitimately remaining in the case, ACQIS' allegations  
09:30 10                  against products using USB 3.0, and we should be  
09:30 11                  preparing those for trial.

09:30 12                  ACQIS fought the issue of PCI Express in  
09:30 13                  the EMC case. They fought this claim construction in  
09:30 14                  the Federal Circuit. They appealed specifically on  
09:30 15                  this claim construction, and they specifically raised  
09:30 16                  the issue of backwards compatibility and they lost.  
09:30 17                  Now it's time to move on.

09:30 18                  And I want to go to just the third point,  
09:30 19                  Your Honor, which is the notion that backwards  
09:30 20                  compatibility is important to the invention and the  
09:30 21                  notion that backwards compatibility needs to be  
09:30 22                  imported into -- they want to import the notion of  
09:30 23                  backwards compatibility that they say is somewhere in  
09:30 24                  the specification into the construction.

09:30 25                  Well, frankly, Your Honor, ACQIS is just

09:31 1 wrong on importing backwards compatibility into the PCI  
09:31 2 bus transaction.

09:31 3 Now, it is absolutely true that prior  
09:31 4 courts have looked at this invention, these claims and  
09:31 5 said, backwards compatibility's important. But what  
09:31 6 they say backwards compatibility is important is itself  
09:31 7 important.

09:31 8 What ACQIS has said and what prior courts  
09:31 9 have said is that ACQIS' invention allowed their  
09:31 10 invention, their system, their computer, their device,  
09:31 11 their bus to be backwards compatible with existing PCI  
09:31 12 legacy devices.

09:31 13 And so basically back when they came up  
09:31 14 with their invention in the early 2000s there was a  
09:31 15 whole bunch of PCI devices out there. There was a  
09:31 16 whole bunch of different PCI peripheral devices out  
09:31 17 there that used the PCI local bus. In order to be  
09:31 18 commercially successful, their device had to be able to  
09:31 19 communicate with these legacy devices. And so that's  
09:31 20 the type of backwards compatibility that's important.

09:31 21 But what's also important is the way they  
09:32 22 did that, the way they maintained backwards  
09:32 23 compatibility is they allowed their invention to speak  
09:32 24 to the legacy PCI devices using a PCI local bus  
09:32 25 transaction, using a transaction that's in accordance

09:32 1 with the PCI local bus specification.

09:32 2 And that's actually critically important  
09:32 3 because the legacy PCI devices only spoke PCI. They  
09:32 4 needed a PCI bus transaction in accordance with the  
09:32 5 specification to actually communicate that.

09:32 6 You can see that in the arguments they  
09:32 7 made on appeal. They said in their opening brief, we  
09:32 8 maintain backwards compatibility by enabling the new  
09:32 9 physical layer of their interface to communicate PCI  
09:32 10 standard bus transactions. They said they couldn't  
09:32 11 abandon the PCI standard because it was required for  
09:32 12 the computer system to be commercially successful. And  
09:32 13 EMC said the same thing.

09:32 14 So everyone recognized at -- on the  
09:32 15 Federal Circuit at appeal and in the prior decisions,  
09:33 16 that the compatibility that they were talking about was  
09:33 17 the compatibility of the ACQIS interface, the ACQIS  
09:33 18 device with existing legacy devices. It wasn't about  
09:33 19 transactions being compatible. The transactions had to  
09:33 20 be in accordance with the standard.

09:33 21 And we know that -- frankly, we know that  
09:33 22 because ACQIS said that in the IPRs. And this is  
09:33 23 actually intrinsic evidence because it's part of the  
09:33 24 prosecution history. It's part of the record.

09:33 25 ACQIS said, "PCI is an industry

09:33 1 Standard...Even minor deviations from a standard will  
09:33 2 result in incompatible hardware and  
09:33 3 Software...Adherence to the specification...is critical  
09:33 4 for interoperability..."

09:33 5 So -- and this is -- this is from ACQIS' mouth. They needed to have a PCI bus transaction in  
09:33 6 accordance with the specification in order to  
09:33 7 communicate with the legacy devices. That's what they  
09:33 8 needed to do.

09:33 10 Even minor deviations from the standard could render it unable to communicate with legacy PCI  
09:33 11 devices, to actually do the communication with existing  
09:34 12 devices, other devices, other physical devices,  
09:34 13 printers, whatnot, out there. And so it's not just a  
09:34 14 software issue. They had to have this transaction in  
09:34 15 accordance with the PCI bus transaction -- the PCI  
09:34 16 local bus specification in order to render the device,  
09:34 17 the interface, compatible with existing devices.

09:34 19 Now, ACQIS' counsel posed the question,  
09:34 20 well, what's the difference between "in accordance  
09:34 21 with" or "backwards compatibility"?

09:34 22 Well, this is exactly the issue. ACQIS  
09:34 23 wants to take transactions that do not follow the  
09:34 24 standard precisely, that have these minor deviations  
09:34 25 from the standard and say, well, the deviations aren't

09:34 1 important. They're minor. They're not a big deal.

09:34 2 It's compatible.

09:34 3 But that's inconsistent with what they  
09:34 4 told the PTAB. That's inconsistent with what they've  
09:34 5 said the invention requires. And that's inconsistent  
09:34 6 with the notion of actually communicating with legacy  
09:35 7 PCI devices, because even minor deviations from the  
09:35 8 standard can result in incompatibility.

09:35 9 So what compatibility means in the  
09:35 10 context of the invention, and it's compatibility for  
09:35 11 the invention overall, is compatibility with legacy's  
09:35 12 PCI devices. It achieves that by sending transactions  
09:35 13 that are in accordance with the PCI local bus  
09:35 14 specification.

09:35 15 And so if you expand the definition of  
09:35 16 "transactions," if you insert "backwards compatibility"  
09:35 17 and loosen the definition of "transactions," then that  
09:35 18 in itself is actually going to break backwards  
09:35 19 compatibility and be inconsistent with the invention.

09:35 20 And I just want to show one other thing,  
09:35 21 Your Honor, because ACQIS made a distinction between  
09:35 22 the definition and "in accordance with" and said we're  
09:36 23 sort of attempting to do some sort of higher standard.

09:36 24 And so what I have up on the screen is  
09:36 25 Exhibit 2 from defendant's motion for judgment, which

09:36 1 is ACQIS' opening brief in the Federal Circuit.

09:36 2                   What ACQIS said to the Federal Circuit is  
09:36 3 they invented a technique for connecting modules using  
09:36 4 an interface channel that was still compatible with  
09:36 5 existing software because it could communicate the  
09:36 6 transactions defined by the dominant communications  
09:36 7 standard at the time, the peripheral component  
09:36 8 interconnect standard, the PCI standard.

09:36 9                   And so we're not making things up. We're  
09:36 10 not sort of holding them to a heightened standard.  
09:36 11 ACQIS themselves said their transactions had to be  
09:36 12 defined by the PCI component interconnect standard.

09:36 13                   Federal Circuit said that's in accordance  
09:36 14 with the standard. I think those two are consistent,  
09:36 15 but really we don't need to make any decision there  
09:36 16 because the Federal Circuit has given us the language.  
09:36 17 It has said the transactions have to be in accordance  
09:37 18 with the standard, and it has also said that that  
09:37 19 forecloses ACQIS' infringement read against PCI  
09:37 20 Express.

09:37 21                   So with that, Your Honor, I think the  
09:37 22 answer is simple. We need to stick with the Federal  
09:37 23 Circuit's construction verbatim, adopt it, as Your  
09:37 24 Honor has said you will do with the other two  
09:37 25 constructions, and move on so that we can focus on the

09:37 1 claims against USB 3 that are legitimately still in the  
09:37 2 case.

09:37 3 And unless Your Honor has any questions,  
09:37 4 thank you.

09:37 5 THE COURT: Mr. Collard, if you'll give  
09:37 6 me just one second. I'll be right back.

09:37 7 (Pause in proceedings.)

09:41 8 THE COURT: Okay. If we could go back on  
09:42 9 the record.

09:42 10 So as I understand it -- these are  
09:42 11 questions for defense counsel before I jump back over  
09:42 12 to plaintiff.

09:42 13 As I understand it, Judge Davis and Judge  
09:42 14 Burroughs essentially determined that PCI bus is not  
09:42 15 required.

09:42 16 Do I have that much right?

09:42 17 MR. SEDDON: Yes, Your Honor. They  
09:42 18 determined that the invention does not require the  
09:42 19 presence of a physical PCI bus in the system, but that  
09:42 20 the bus transactions that were set were nonetheless had  
09:42 21 to be in accordance with the standard.

09:42 22 THE COURT: And my question about that  
09:42 23 is, if that's correct, what would a POSITA feel about  
09:42 24 whether or not all the PCI information would be  
09:42 25 required that is required in a PCI bus transaction?

09:42 1 MR. SEDDON: So, Your Honor, I think what  
09:42 2 we have from the evidence and what was explicitly  
09:42 3 argued to the Federal Circuit is that all of the  
09:42 4 information has to be present. And what the Federal  
09:43 5 Circuit looked to, at least in argument, was all of the  
09:43 6 required -- the information sent by the required pins  
09:43 7 as shown in the PCI local bus specification.

09:43 8 THE COURT: Even though it's going to be  
09:43 9 a different architecture than a PCI bus?

09:43 10 MR. SEDDON: So although the PCI --  
09:43 11 there's going to be a different architecture, it can be  
09:43 12 conveyed over a different physical layer. Ultimately  
09:43 13 the goal was to take that information and then turn it  
09:43 14 into something that could be received by a local PCI, a  
09:43 15 legacy device that has all those pins and needs the  
09:43 16 information from all those required pins.

09:43 17 So if you think about it, you know, let's  
09:43 18 say you've got a 1995 printer that's speaking PCI local  
09:43 19 bus, you know, it has to have all those required pins.  
09:43 20 And it's got to have information coming in over all  
09:43 21 those required pins.

09:43 22 And so even if ACQIS' XP bus is sort of  
09:44 23 repackaging everything, it's still got to at least have  
09:44 24 all the signals that are going over those required pins  
09:44 25 so that it can repackage them and then communicate with

09:44 1 that 1995 printer.

09:44 2 THE COURT: And has any court expressly  
09:44 3 held that backwards compatible, that "backwards  
09:44 4 compatible" was excluded from "in accordance with"?

09:44 5 MR. SEDDON: Your Honor, I think ACQIS  
09:44 6 has argued backwards compatibility. It argued that  
09:44 7 backwards compatibility was essential to the invention  
09:44 8 when it actually argued to the Federal Circuit. That's  
09:44 9 part of their brief. That's part of what they said.  
09:44 10 That's what they defined the solution of the problem  
09:44 11 was.

09:44 12 And so the Federal Circuit looked at all  
09:44 13 of their arguments and said, no, what we require is we  
09:44 14 require transactions that are in accordance with the  
09:44 15 specification.

09:44 16 THE COURT: We can go back to the  
09:44 17 plaintiff now. And I'm happy to hear plaintiff's  
09:45 18 response. Mr. Collard?

09:45 19 MR. COLLARD: Your Honor, I'm going to  
09:45 20 keep it very brief.

09:45 21 I would say that Mr. Seddon's response to  
09:45 22 your question about what needs to be there when there's  
09:45 23 no PCI bus sure sounded a lot like backwards  
09:45 24 compatibility to me, to say you still have to be able  
09:45 25 to talk to the 1995 printer.

09:45 1 I think that that is hard to get around  
09:45 2 and that is why, going back to Judge Davis, there has  
09:45 3 been -- not -- it hasn't even really been that much in  
09:45 4 dispute that backwards compatibility is the concept  
09:45 5 that is necessary to bridge the gap when there's no  
09:45 6 physical PCI bus required.

09:45 7 If there's no physical PCI bus required,  
09:45 8 then -- and, frankly, I think this is what you came to,  
09:45 9 why you added it in the first place in November, is we  
09:45 10 were having this argument and you said, look. I'm not  
09:46 11 going to say it needs A, B, C. I'm going to say it has  
09:46 12 to be backwards compatible. And I think that that is  
09:46 13 just right in line with what the other courts have  
09:46 14 done.

09:46 15 And the answer to your question, has any  
09:46 16 court excluded backwards compatibility from in  
09:46 17 accordance with? The simple answer to that is no. No  
09:46 18 court has looked at that and said no. That is not a  
09:46 19 part of backwards -- or that is not a part of "in  
09:46 20 accordance with."

09:46 21 I mean, you would have seen that if --  
09:46 22 you would have seen that highlighted if that had been  
09:46 23 explicitly addressed, and that's because it hasn't.  
09:46 24 The idea of backwards compatibility has been in the  
09:46 25 background, but hasn't been explicitly addressed but --

09:46 1 and especially hasn't been rejected by any court  
09:46 2 because they weren't explicitly asked to include it at  
09:46 3 any stage.

09:46 4 And I think -- I don't want to go into  
09:46 5 this too much. I think that a lot of Mr. Seddon's  
09:46 6 argument was infringement. We got to take it step by  
09:47 7 step because the claims are king. We may have some  
09:47 8 claims -- and I think Your Honor recognized this when  
09:47 9 you indicated we'd have the ability to go back and look  
09:47 10 at this again, look at our claims again, but we may  
09:47 11 have some claims that require transmission of, you  
09:47 12 know, parts of the PCI bus transaction, the entire PCI  
09:47 13 bus transaction, something else.

09:47 14 So we have to be careful to not let  
09:47 15 infringement drive the claim construction process. And  
09:47 16 so I think that if you do that, then you do need to  
09:47 17 look at this from the 02 Micro perspective. We have a  
09:47 18 dispute about claim scope that should be resolved by  
09:47 19 the Court.

09:47 20 And then that leads me to my last point  
09:47 21 and that the justification for doing that, and  
09:47 22 defendants point to the Eolas case in their briefing a  
09:47 23 couple times. This is the last page of their final  
09:47 24 brief, Docket 203: No law allows this Court to change  
09:48 25 the scope of the Federal Circuit's construction. See

09:48 1 Eolas text.

09:48 2 We are not asking the Court to change the  
09:48 3 scope. We're asking for a clarification.

09:48 4 I think it's also important to note that  
09:48 5 the Eolas case was on the exact same patent. And here  
09:48 6 you might recall, we're not on the exact same patent  
09:48 7 and the question is about -- the prime directive is  
09:48 8 about being consistent. It's not about having the  
09:48 9 exact same words, and this doesn't change the scope.

09:48 10 And then I think if you look at Eolas,  
09:48 11 the construction that the Court was going to adopt  
09:48 12 before they went with the Federal Circuit's  
09:48 13 construction was just completely different, whole  
09:48 14 cloth, new construction.

09:48 15 And I'd say what you have done here is  
09:48 16 gone to great lengths to try to square your  
09:48 17 construction with the Federal Circuit and make sure  
09:48 18 you're consistent. And I'd say what you're doing is  
09:48 19 consistent with Eolas.

09:48 20 THE COURT: You actually were pressing  
09:48 21 it. You actually took -- you answered the question  
09:48 22 I -- the only question I had and was about to ask you  
09:49 23 with regard to how do we -- how do we do our best to  
09:49 24 divine what the Circuit is trying to signal to us. So  
09:49 25 I think you covered that.

09:49 1 Anything in response?

09:49 2 MR. SEDDON: Your Honor, two quick

09:49 3 things.

09:49 4 First, backwards compatibility, as it has

09:49 5 been discussed consistently throughout all the cases,

09:49 6 is backwards compatibility of ACQIS' interface with

09:49 7 other devices. It's -- and it's -- ACQIS has said it

09:49 8 achieves that by using a bus transaction in accordance

09:49 9 with the specification.

09:49 10 So if backwards compatibility is a

09:49 11 requirement, if that is a key feature of the invention,

09:49 12 it does not go in the transaction. It is a feature of

09:49 13 the overall invention. And it's not something that you

09:49 14 should redefine the transaction to include.

09:49 15 And the second point, Your Honor, is if

09:49 16 backwards compatibility means anything other than in

09:49 17 accordance with the specification, in full compliance

09:49 18 with the specification, then in fact, it is

09:50 19 inconsistent with the Federal Circuit's decision.

09:50 20 Because the Federal Circuit looked at this and said --

09:50 21 and in our earlier presentation we showed you the

09:50 22 quotes from the Federal Circuit when they said, look,

09:50 23 all the information required by the specification's

09:50 24 required.

09:50 25 So to the extent that ACQIS comes back

09:50 1 and says backwards compatibility allows any deviation  
09:50 2 from the PCI local bus specification, that's  
09:50 3 inconsistent with the Federal Circuit's decision.

09:50 4 THE COURT: I got it.

09:50 5 MS. MARRIOTT: Your Honor, if I may.

09:50 6 This is Michelle Marriott for ASUSTeK. And I want to  
09:50 7 just answer your question very directly.

09:50 8 I think your question was has any court  
09:50 9 ever said that backwards compatibility should be  
09:50 10 excluded from the construction? If I understand it,  
09:50 11 that was the question.

09:50 12 And with respect to PCI Express, the  
09:50 13 answer is absolutely yes. And that happened in the EMC  
09:50 14 case. That was the central issue in the EMC case.

09:50 15 And I -- you know, I would just kind of  
09:51 16 point the Court to our opening brief on this which was  
09:51 17 Docket 117. On Page 2 we talk about the history here.  
09:51 18 The Federal Circuit specifically adopted the EMC's  
09:51 19 construction, and that was that it must be in  
09:51 20 accordance with the PCI local bus specification.

09:51 21 The EMC court held the claims are limited  
09:51 22 by the PCI specification in its entirety. And during  
09:51 23 that oral argument at the Federal Circuit, Judge Chen  
09:51 24 asked, you know, as I understand it, the point that the  
09:51 25 judge was making in EMC was that this transmission has

09:51 1 to be in accordance with the PCI bus transaction. And  
09:51 2 ACQIS answered, right.

09:51 3 And so that's the entire PCI bus  
09:51 4 transaction? That was the question.

09:51 5 Right. That's exactly right.

09:51 6 There's no deviation here. And going  
09:51 7 back to Mr. Collard's suggestion earlier that future  
09:51 8 standards -- we can't say that a future standard can't  
09:51 9 be infringing. We can as to PCI Express.

09:51 10 Because that is exactly what the Federal  
09:52 11 Circuit affirmed in the EMC case, that PCI Express, a  
09:52 12 later standard, is not a transaction in accordance with  
09:52 13 the PCI standard. It is not a bizarre result and it's  
09:52 14 the result that was actually held by the EMC court and  
09:52 15 was affirmed by the Federal Circuit.

09:52 16 Respectfully, Your Honor, this has  
09:52 17 already been decided by the Federal Circuit.

09:52 18 And backwards compatibility here, no  
09:52 19 court has ever held that a backwards compatible  
09:52 20 standard should be incorporated within the claim scope.  
09:52 21 It's just -- that's exactly what was held in EMC.

09:52 22 THE COURT: Any response or anyone want  
09:52 23 to say anything else?

09:52 24 MR. COLLARD: Nothing from ACQIS, Your  
09:52 25 Honor.

09:52 1 THE COURT: I'll be back in a few  
09:52 2 seconds.

09:52 3 (Pause in proceedings.)

09:59 4 THE COURT: Okay. If we could go back on  
09:59 5 the record.

09:59 6 I'm going to adopt the Circuit's  
09:59 7 construction of "a transaction in accordance with the  
09:59 8 industry standard PCI local bus specification or  
10:00 9 communication with interconnected peripheral  
10:00 10 component."

10:00 11 But I also am putting on the record --  
10:00 12 and we'll get a written order out on this as quickly as  
10:00 13 possible -- we agree with plaintiff that "in accordance  
10:00 14 with" includes "backward compatibility" and that adding  
10:00 15 "backwards compatibility" does not expand the claim  
10:00 16 scope.

10:00 17 My understanding is we also have at least  
10:00 18 one discovery issue to take up. Whose discovery issue  
10:00 19 is it?

10:00 20 MR. MILLER: Actually, Your Honor, what  
10:00 21 we had was pointing out a couple other constructions  
10:00 22 from the EMC case to make sure what claim language they  
10:00 23 do and do not apply to.

10:00 24 THE COURT: Okay.

10:00 25 MR. MILLER: And I will go ahead and

10:00 1 share my screen to talk about those issues.

10:00 2 THE COURT: Okay. Very good.

10:00 3 MR. MILLER: The first construction deals  
10:01 4 with -- during the EMC case deals with this phrase  
10:01 5 "communicating... PCI bus transaction."

10:01 6 And so it's important here to focus on  
10:01 7 what happened at the Federal Circuit. It's what  
10:01 8 happens at the appeals court that matters.

10:01 9 First, let's look at the claims that were  
10:01 10 at issue in EMC.

10:01 11 On the left-hand side, you have a list of  
10:01 12 the claims that state that the PCI bus transaction  
10:01 13 itself is communicated. It says these are the claims  
10:01 14 that say you transmit or communicate the transaction.

10:01 15 And then sometimes they will also say,  
10:01 16 wherein the transaction includes or comprises address  
10:01 17 and data bits. So those are the claims on the  
10:01 18 left-hand side.

10:01 19 If you look on the right-hand side, these  
10:01 20 are claims that say you communicate not the  
10:01 21 transaction. You communicate the address and data bits  
10:01 22 of the transaction.

10:02 23 So these are what were referred to during  
10:02 24 the Federal Circuit briefing as the "address and data  
10:02 25 bits claims." So it's important to keep these two

10:02 1 categories of claims from EMC in mind as you go through  
10:02 2 what happened on appeal.

10:02 3 At the -- first of all, Judge Burroughs'  
10:02 4 decision framed the claim language as this:

10:02 5 Communicating...PCI bus transaction. And then adopted  
10:02 6 what she felt was an agreement between the parties.

10:02 7 There's no express statement from Judge  
10:02 8 Burroughs that this "communicating... PCI bus  
10:02 9 transaction" applies to any claim that refers to  
10:02 10 communicating PCI bus transaction, including the  
10:02 11 address and data bits claims.

10:02 12 And on appeal both EMC and ACQIS made  
10:02 13 that clear. ACQIS argued in its appeal brief that they  
10:02 14 did not agree that the address and data bits claims are  
10:03 15 limited by this construction.

10:03 16 ACQIS explained that the district court  
10:03 17 on this issue didn't address the merits. It wasn't  
10:03 18 actually litigated. It was rejected as untimely. And  
10:03 19 so it was rejected at the summary judgment stage on a  
10:03 20 procedural basis. So it was never actually litigated  
10:03 21 or decided.

10:03 22 And EMC agreed in their appeal brief.  
10:03 23 EMC said that the district court never reached the  
10:03 24 separate arguments concerned -- or ACQIS asserts they  
10:03 25 never reached them. And EMC says that ACQIS' argument

10:03 1 was forfeited. That's a procedural resolution that  
10:03 2 doesn't implicate issue preclusion or collateral  
10:03 3 estoppel. EMC also argued to the Federal Circuit ACQIS  
10:03 4 never made this argument.

10:03 5 Now, the most important admission EMC  
10:03 6 made at the Federal Circuit is this footnote right  
10:03 7 here. EMC said this: EMC takes no position at this  
10:04 8 time as to whether the address and data [bits] claims  
10:04 9 also require transmission of the control and parity  
10:04 10 bits that are part of the transaction...

10:04 11 So EMC took no position on this which  
10:04 12 means it cannot be the subject of issue preclusion.

10:04 13 So what did the Federal Circuit decide?  
10:04 14 Here's what really governs the issue, Your Honor, is  
10:04 15 the Federal Circuit's decision. In this footnote they  
10:04 16 say: The asserted claims use slight variations of  
10:04 17 [this term].

10:04 18 Look at the claims the Federal Circuit's  
10:04 19 decision places as an example of the communicating PCI  
10:04 20 bus transaction constructions. They cite this one.  
10:04 21 They cite the '416 patent, the '487, the '873 and the  
10:04 22 '294. These are all the claims that say you  
10:04 23 communicate the transaction itself.

10:04 24 What claims did the Federal Circuit not  
10:04 25 include in this list in Footnote 1? The Federal

10:05 1 Circuit's decision never mentioned the '814 patent, the  
10:05 2 '119 patent, the '171 patent or the '468 patent when  
10:05 3 explaining here are examples of communicating PCI bus  
10:05 4 transaction.

10:05 5 So the question of whether the  
10:05 6 construction of communicating...PCI bus transaction  
10:05 7 applies to address and data bits claims has never been  
10:05 8 decided on its merits.

10:05 9 The district court's claim construction  
10:05 10 order doesn't address it. The summary judgment order  
10:05 11 doesn't address it. The summary judgment order says  
10:05 12 ACQIS' additional claim construction arguments are  
10:05 13 waived and untimely.

10:05 14 And the Federal Circuit decision doesn't  
10:05 15 address it. In fact, the Federal Circuit decision uses  
10:05 16 the other claims as examples and not the address and  
10:05 17 data bits claims as examples. And EMC expressly took  
10:05 18 no position on this issue.

10:05 19 So the Court's construction as it stands  
10:05 20 in this case -- your construction, Your Honor, where  
10:06 21 you say address and data bits is plain and ordinary  
10:06 22 meaning, that is entirely consistent with what happened  
10:06 23 on appeal at the Federal Circuit.

10:06 24 Because the claims where it says you  
10:06 25 communicate not the entire transaction but the address

10:06 1 and data bits of a transaction, that is something that  
10:06 2 was not by the admission of both ACQIS and EMC and by  
10:06 3 the Federal Circuit's decision in its Footnote 1, that  
10:06 4 is not something that was decided.

10:06 5 So applying plain and ordinary meaning to  
10:06 6 the simple reference to address and data bits of a PCI  
10:06 7 bus transaction is entirely appropriate for the Court  
10:06 8 to maintain in this case.

10:06 9 The next claim limitation I want to bring  
10:06 10 to the Court's attention is a very simple one. It's  
10:06 11 the one that says "encoded...serial bit stream."

10:06 12 At the district court level, Judge  
10:06 13 Burroughs identified the relevant claim term as this:  
10:06 14 Encoded... serial bit stream.

10:07 15 The briefing in the district court made  
10:07 16 it clear that Judge Burroughs was relying on the  
10:07 17 prosecution history during the IPR to construe this  
10:07 18 term. So how did she review that prosecution history,  
10:07 19 because she said Judge Davis never had this prosecution  
10:07 20 history?

10:07 21 So she reviewed it, and here's what she  
10:07 22 said. During the IPR, she said: Because the claims  
10:07 23 use encoded, ACQIS made these arguments.

10:07 24 So the arguments from the file history  
10:07 25 she relied on to limit the claim language was expressly

10:07 1 linked to the word "encoded" in that phrase. And she  
10:07 2 kept quoting ACQIS' arguments. And every time she  
10:07 3 referred to an argument from the IPR, it was about an  
10:07 4 encoded transaction.

10:07 5 She also said that the claim language  
10:07 6 that's at issue here, the disputed term essentially  
10:08 7 contains the following elements: Element No. 1,  
10:08 8 encoded.

10:08 9 So Judge Burroughs never construed the  
10:08 10 scope and meaning of claim language that did not  
10:08 11 include encoded with the serial language, which means  
10:08 12 the EMC construction, to the extent it applies in this  
10:08 13 case, it applies to claims that talk about an encoded  
10:08 14 serial bit stream. It does not apply to claims that  
10:08 15 don't have the word "encoded."

10:08 16 So that's an important distinction we  
10:08 17 wanted to bring to the Court's attention. There are  
10:08 18 some claims that talk about serial bit stream or  
10:08 19 serialized that do not refer to it as an encoded serial  
10:08 20 bit stream, and that makes a difference, because the  
10:08 21 EMC case was explicitly limited to claim language that  
10:08 22 combined encoded with serial bit stream.

10:08 23 And those are my two issues that I wanted  
10:08 24 to bring to the Court's attention.

10:08 25 THE COURT: Is there a response?

10:09 1 MR. SEDDON: Yes, Your Honor. Jeff  
10:09 2 Seddon for the Lenovo defendants.

10:09 3 So first, Your Honor, I want to talk  
10:09 4 about ACQIS' argument -- actually, let me just preface  
10:09 5 this by saying, Your Honor, these issues have already  
10:09 6 been decided.

10:09 7 This dispute -- this issue comes back in  
10:09 8 front of you because after Your Honor heard argument in  
10:09 9 the July hearing, you directed us to go and come up  
10:09 10 with an agreement on which claim terms the  
10:09 11 constructions that Your Honor agreed to adopt applied  
10:09 12 to in order to make things more convenient rather than  
10:09 13 pulling the chart that defendants had provided in our  
10:09 14 opening motion out of the briefing.

10:09 15 And so really this is an issue where  
10:09 16 ACQIS is just trying to reargue something that they've  
10:09 17 already lost. We already went through all this and why  
10:09 18 the constructions apply to the specific claims that we  
10:10 19 spelled out in all of our charts.

10:10 20 So this is effectively a last-minute  
10:10 21 request for reconsideration not even made under motion  
10:10 22 and Your Honor should disregard it and adopt the chart  
10:10 23 that we put in our motion for judgment.

10:10 24 With regard to the specific points, so  
10:10 25 first with regard to the communicating of PCI bus

10:10 1 transaction, ACQIS apparently contends that where claim  
10:10 2 terms recite specific types of bits, such as address  
10:10 3 and data bits, the construction from the Federal  
10:10 4 Circuit, the construction in the EMC case, can't apply  
10:10 5 because they didn't actually -- they argued and -- EMC  
10:10 6 only argued forfeiture at the Federal Circuit.

10:10 7 But first of all, that's totally wrong as  
10:10 8 a matter of collateral estoppel because they -- the  
10:10 9 issue came up and was decided in the EMC case below.  
10:10 10 The fact that they didn't actually successfully argue  
10:11 11 it and EMC didn't address it on appeal doesn't change  
10:11 12 the fact that they lost it below.

10:11 13 And the second point is, the notion that  
10:11 14 the Federal Circuit didn't have an opportunity to  
10:11 15 consider it or didn't consider it just doesn't make any  
10:11 16 sense. The Federal Circuit adopted the EMC  
10:11 17 constructions below despite the fact that ACQIS  
10:11 18 specifically made the argument that the "communicating  
10:11 19 of PCI bus transaction" term did not apply to terms  
10:11 20 specifically reciting address and data bits.

10:11 21 And so that's in Exhibit 2 to our opening  
10:11 22 motion, their opening appeal brief at Page 26 and 31,  
10:11 23 it's in the reply brief at 20 and 21.

10:11 24 They specifically made this argument to  
10:11 25 the Federal Circuit that the construction should not

10:11 1 apply to terms reciting address and data bits, and the  
10:11 2 Federal Circuit said, no. We're adopting the EMC  
10:11 3 construction.

10:11 4 The second point I want to make, and this  
10:12 5 actually comes directly from ACQIS' slides, you know,  
10:12 6 ACQIS told you that if you look at the -- and I'm  
10:12 7 sharing Page -- Slide 21 of ACQIS' slides today. If  
10:12 8 you look at the Federal Circuit's decision, it doesn't  
10:12 9 actually apply to claims that just recite address and  
10:12 10 data bits.

10:12 11 But, in fact, the very first claim here,  
10:12 12 Claim 60 of the '416 patent that the Federal Circuit  
10:12 13 put in its opinion as an example, was about  
10:12 14 "communicating encoded serialized [PCI] component  
10:12 15 interconnect bus transaction data...wherein the serial  
10:12 16 bit stream of [the] PCI bus transaction comprises  
10:12 17 encoded PCI address and data bits."

10:12 18 So literally the first example the  
10:12 19 Federal Circuit gave was about communicating data that  
10:12 20 was just address and data bits. And the Federal  
10:12 21 Circuit adopted a construction saying that that was  
10:12 22 address data and control bits.

10:12 23 And so the notion that the Federal  
10:13 24 Circuit wasn't addressing this issue just doesn't hold  
10:13 25 up. It doesn't hold up even if you look at the example

10:13 1 that ACQIS put in front of you.

10:13 2 Let me just stop sharing for a second.

10:13 3 The second point I want to make with

10:13 4 regard to the encoded versus serial argument --

10:13 5 THE COURT: If I've looked quizzical

10:13 6 during this, I've checked with both Josh and my law

10:13 7 clerk and we had no heads-up this was going to be

10:13 8 argued as part of this hearing this morning.

10:13 9 So my understanding is we had the issue

10:13 10 I've ruled on and we had a discovery issue. If this is

10:13 11 the discovery issue, I don't think it is. I think this

10:13 12 sounds more like a summary judgment motion that y'all

10:14 13 have in front of us.

10:14 14 Is there a discovery issue that needs to

10:14 15 be taken up?

10:14 16 MR. SEDDON: Your Honor, I --

10:14 17 MR. MILLER: Your Honor, I can explain

10:14 18 how this came up. We did e-mail the Court when -- the

10:14 19 Court gave us direction to identify what claim language

10:14 20 the EMC constructions applied to. And in that process

10:14 21 the proposal we got from defendants was applying these

10:14 22 two constructions beyond their proper scope. So we

10:14 23 sent our own separate e-mail on that issue.

10:14 24 So those e-mails were sent to the Court.

10:14 25 We're happy to maybe provide the Court some short

10:14 1 five-page briefing on these two constructions in that  
10:14 2 context instead of handling it here.

10:14 3 THE COURT: That'd be fine.

10:14 4 Is there a separate discovery motion?

10:14 5 MR. COLLARD: Your Honor, yes, there is a  
10:14 6 discovery motion. And let me -- I want to just frame  
10:14 7 this out to make sure we're all on the same page and  
10:15 8 doing this in the most efficient way.

10:15 9 The discovery dispute is about the  
10:15 10 inclusion of products in the amended infringement  
10:15 11 contentions. And -- because we're anticipating  
10:15 12 amending infringement contentions after we have nailed  
10:15 13 down all these claim construction issues.

10:15 14 So I'm not sure if you want us to take  
10:15 15 that up right now or not. Because to me it goes more  
10:15 16 with once we've got these claim construction issues  
10:15 17 down and are setting a schedule and saying, hey, we're  
10:15 18 going to amend our infringement contentions. What  
10:15 19 amendments are allowed or not allowed? And we would --  
10:15 20 we have a dispute about that.

10:15 21 THE COURT: Let's do this then. Let's  
10:15 22 table that discovery dispute until we get the briefing  
10:15 23 on this. We'll rule on that. And then if there's  
10:15 24 still a dispute, let -- I'm not sure who's taking -- I  
10:15 25 have all new clerks starting today. So I'm not sure

10:15 1 who's taking Jeffrey's. I think it'll be Beth who will  
10:15 2 be taking Jeffrey's place. A dramatic improvement, I'm  
10:15 3 sure.

10:15 4 And so Jeffrey's not even in here,  
10:16 5 probably good that he's not in here.

10:16 6 But so when you all -- why don't we do  
10:16 7 this: When you get us the briefs, give Beth a  
10:16 8 heads-up -- be gentle, she will be brand new -- that I  
10:16 9 asked you all to do this, just that it's ripe. And  
10:16 10 then we'll get to work on that.

10:16 11 And as soon as we have that resolved,  
10:16 12 then let her know that we need to have a quick hearing,  
10:16 13 if we do, on resolving the products in the infringement  
10:16 14 contentions issue.

10:16 15 MR. COLLARD: Your Honor, that works for  
10:16 16 us. Should we do the same schedule we did last time  
10:16 17 with alternating five-page briefs simultaneous?

10:16 18 THE COURT: Yeah. That sounds great.

10:16 19 MR. COLLARD: Do you guys need a week or  
10:16 20 two weeks to do the opening brief since we've already  
10:16 21 been looking at this issue?

10:16 22 MR. SEDDON: Your Honor, I think if we're  
10:16 23 going to do this, then we would appreciate two weeks to  
10:16 24 do the opening.

10:16 25 I would say that, Your Honor, I think

10:17 1 they're effectively asking for reconsideration of an  
10:17 2 issue that's already decided and you don't actually  
10:17 3 need briefing to decide this. It was argued and  
10:17 4 thoroughly briefed in defendants' motion for judgment  
10:17 5 on the pleadings.

10:17 6 THE COURT: Well, it's been raised in a  
10:17 7 discrete way. Let's just go ahead and get a little  
10:17 8 briefing done on it and that way it'd probably be  
10:17 9 easier for Beth and I to swallow as well. So we'll be  
10:17 10 able to address it directly.

10:17 11 MR. COLLARD: Thank you, Your Honor.  
10:17 12 That sounds sufficient to us.

10:17 13 MR. SEDDON: Understood, Your Honor.

10:17 14 THE COURT: Anything else to take up?

10:17 15 Okay.

10:17 16 MR. COLLARD: Not from ACQIS, Your Honor.  
10:17 17 Thank you.

10:17 18 THE COURT: For those of you who were  
10:17 19 scheduled to start at 10:00 -- those of you who are not  
10:17 20 on the 10 o'clock call, if you'll drop off and I'll let  
10:17 21 Kristie and Jen get coordinated on that. And then I'll  
10:17 22 call back in.

10:17 23 So thank you, everyone. Have a good day.

10:17 24 (Hearing adjourned.)

25

1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
3  
4

5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
7 District of Texas, do certify that the foregoing is a  
8 correct transcript from the record of proceedings in  
9 the above-entitled matter.

10 I certify that the transcript fees and  
11 format comply with those prescribed by the Court and  
12 Judicial Conference of the United States.

13 Certified to by me this 2nd day of  
14 September 2022.

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